

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SCHULENBURG INDEPENDENT
DISTRICT,

Plaintiff,

v.

Case No:

J.H., a minor, and J.G., his mother,

Honorable:

Defendants.

GENEVA JONES & ASSOCIATES, PLLC

By: Geneva Jones

State Bar No.: 24091062

Attorneys for Plaintiff

2245 Texas Drive, Suite 300

Sugar Land, Texas 77479

Office (832)324-5882

Mobile (832)832-5223

Geneva@Geneva-Jones.com

**VERIFIED COMPLAINT FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY HONIG INJUNCTION**

Plaintiff, **SCHULENBURG INDEPENDENT SCHOOL DISTRICT** (the “District”),
files this Complaint for Temporary Restraining Order and Preliminary Injunction for the following
reasons:

Parties, Jurisdiction and Venue

1. The District is a duly incorporated public school district, organized and operated pursuant to the Texas State Constitution and Texas Education Code.
2. The District’s administrative office is located at 521 Shorthorn Drive, Schulenburg, Texas 78956, which is located in the Southern District of Texas, Houston Division.

3. Defendant, J.H. is a student (the “Student”) who attends the District’s special education behavior program (“Shorthorn Behavior Program”), which is also located in Schulenburg, Texas.
4. Defendant, J.G. (the “Parent”) is the Student’s mother.
5. The Student and the Parent reside in Schulenburg, Texas, within the District’s geographical boundaries; which geographic boundaries are located in the Southern District of Texas, Houston Division.
6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. 1331.
7. Venue is properly laid in this Court pursuant to 28 U.S.C. 1391(b).

Statement of Facts

8. The Student was born on February 18, 2015, and is nine years old.
9. The Student has a diagnosis of oppositional defiant disorder (“ODD”), separation anxiety disorder, attention deficit hyperactivity disorder (“ADHD”), and a behavior disorder.
10. The Student is a child with a disability within the meaning of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. 1400, et seq., and Texas law.
11. The Student qualifies for IDEA special education as a student with an Emotional Disturbance.
12. The Student further meets the secondary eligibility of Other Health Impairment due to ADHD.
13. The Student was initially served under Section 504 of the Rehabilitation Act and received Response to Intervention Services to address educational difficulties.

14. In September 2023, the Student was referred for a Full Individual and Initial Evaluation (the “Evaluation”) to determine whether he met the IDEA eligibility criteria for a student with an Emotional Disturbance or Other Health Impairment.
(See Exhibit I, Full Individual and Initial Evaluation.)
15. The Evaluation process was completed on November 14, 2023.
16. Prior to the completion of the Evaluation, the Student engaged in the following violent, threatening, and aggressive behaviors as described on the Discipline Logs between August 15, 2023, and November 14, 2023 of the 2023-2024 school year *(See Exhibit H, Student Discipline Log.):*
 - a. On August 15, 2023, the first day of school, at 10:30 a.m. the Student refused to stay in his classroom. His mother was contacted and stated, “he is not a problem at home and that if he is a problem at school, then [the District] needs to deal with it at school.” The District implemented a check-in plan throughout the day and incentivized the Student for successful completion of the school day. Due to continuing conduct violations, the Student was later removed from class and counseled in the hallway by the music teacher.
 - b. On August 18, 2023, the fourth (4th) day in a row, the Student was throwing things, kicking his desk, arguing with the teacher, and not complying with directives. For their safety, the other children were evacuated from the classroom. The principal, Dr. Angie Westerfield, and Assistant Principal, Kacy Svatek remained in the classroom with the Student. The behaviors continued and the Student was removed to In-school suspension (“ISS”) at 8:17 a.m.
 - c. August 21, 2023, at 7:50 a.m. The Student refused to get out of the car. As he was being escorted into the building, he hit Assistant Principal Svatek and punched her in the face. The Student was briefly restrained in accordance with District policy. The Student was given the option to calm down in the assistant principal's or the counselor's office. He verbally selected the counselor's office and shouted, “No, I don't want to,” as he followed the AP to the counselor's office.

At 7:55 a.m., once in the counselor's office, the Student threw school supplies and pillows. The Student was redirected and allowed to Facetime his mother with Assistant Principal Svatek. During the Facetime call the

Parent, the Student and Assistant Principal Svatek talked about controlling the Student's emotions. Following the call, Student did not want to go to class because it was "hard."

At 12:30 p.m., the Student refused to go to the gym for physical education ("PE") because his shoes were too loose. The Student was yelling in the hallway. He was given the option to tighten his shoes or get new shoes from the closet. Assistant Principal Svatek brought the Student to the counselor's office to calm down. The assistant principal coaxed the Student to PE class where he was directed to do his exercises. The Student started crying and yelling because he did not want to do the exercises.

At 1:20 p.m., the Student did not want to go to his classroom. He was offered an opportunity to Facetime his mother if he came into class for three minutes. While Facetiming with his mother, the student asked to be picked up from school early. His mother declined, and in response, the Student got angry, threw a stress ball, and began to cry. He was directed back to class but refused, demanding that he spend the remainder of the day in the counselor's office.

At 1:50 p.m., The Student re-entered his classroom, groaning and kicking his desk. For safety reasons, the assistant principal sat with the Student, who started crying on and off while in class.

- d. On August 23, 2023, the Student was running around, yelling at adults, and refused to sit down in the cafeteria for lunch. The Student was removed and had lunch in the quiet room. After lunch, when he returned to his classroom, he yelled at his teacher and ran around the room. The assistant principal was called to escort the Student to ISS. He walked to the ISS room, yelling, "No, I am not going. Call my mom." When he was advised that the District would not call his mother, he started screaming, kicking furniture, and throwing his shoes. During his time in ISS, the following behaviors were seen:

- Hit the teacher in the face with a yardstick, purposely slowing down his swing to make eye contact when he hit her face
- Throwing work and books on the floor
- Kicking teachers
- Tried to knock over a large classroom cubicle
- Kicking shelves
- Crawling on the floor
- Trying to play basketball with teacher's Cheetos bag and threatening to eat her Cheetos
- Taking the teacher's drink and threatening to throw it at her
- Trying to elope from the classroom
- Pulling the window covers down
- Banging on the window yelling "Help" if someone walked by the classroom windows

- Hitting the ceiling light fixture with a yardstick
 - Saying he needs a lot of attention from his mom and kept yelling to call her
 - When the teacher attempted to block the door to stop him from eloping, the Student slapped the teacher's arm and punched her in the face.
- e. On September 5, 2023, The Student got into a fight with another student as they were coming in from PE. The fight started over the students who were cutting in front of each other in line.

Following the fight, the Student was placed in ISS. While in the ISS classroom the Student pushed staff, kicked walls, threw classroom items, screamed and cursed at staff.

- f. On September 21, 2023, while in the bus line, the Student pushed another child and started trying to fight by charging at the other child. The Student was cursing at the other child. In response, the other child punched the Student. School staff quickly responded by separating the boys. Even after being separated, the Student refused to stop fighting. He continued yelling and attempting to get around and away from the adults. The other child remained quiet after the boys were separated.
- g. On September 28, 2023, the Student entered his classroom and began yelling at a female student who he believed cut in line when he was the line leader. He then hit, kicked, and pushed the girl before throwing his backpack at her. The backpack hit another student in the classroom in the face. For the safety of the other children, the room was evacuated. The Student ran through a closet that adjoined another classroom into the other classroom full of students and out that classroom's door to get to his classmates who were lined up next to the wall when the classroom was evacuated. He immediately began attacking the little girl from the classroom, pushing and kicking her. The teacher pulled him from the little girl, another restraint trained teacher restrained the Student in the hallway until an administrator arrived. The female student was taken to the school nurse to address her injuries.

Upon the administrator's arrival, the Student was directed to a calm room but refused. The administrator advised the Student that his grandmother would be called if he did not go to the calm room, to which the Student yelled, "Don't call her." Rather than follow the administrator, the Student started running in the halls to get water. When the administrators started dialing a phone, the student finally complied and went to the calm room.

While in the calm room, the Student threw his shoes at the adults and used his shoes to repeatedly hit the classroom walls, kicked the walls, flickered the classroom lights, banged on the classroom windows and attempted to

kick the classroom windows out. He attempted to elope from the classroom. He yelled at staff to shut up, kicked, elbowed and shoved staff into the classroom door. Staff records state, “He kept posting up to staff saying “what are you going to do about it?” Finally, the assistant principal, Ms. Svatek, left the room because the Student was targeting her stating he was going to push and kick her again. As a result of this violent attack on his classmates and teachers he was given 30 days of placement in a disciplinary classroom. For the safety of other children, the Student was intentionally the only student in the disciplinary classroom.

- h. On October 24, 2024, while in the disciplinary classroom, the Student refused to do his work. He was verbally aggressive, shoving his teacher and then pretending to sleep in the room.
- i. On October 26, 2023, while in the disciplinary classroom, the Student stated, “I am going to slap and kill myself.” In response, the District contacted the crisis team, who conducted a suicide assessment, contacted his mother to discuss a safety plan, contacted Bluebonnet, and contacted the county sheriff to do a wellness check that evening out of concern for the Student’s safety in the home.
- j. On October 27, 2023, while in the disciplinary classroom, the Student tried to spit on his teacher for five consecutive minutes. He hit, kicked, and elbowed the teacher. He yelled that teachers were stupid and idiots, that he did not want to work, and that his teacher was mean.
- k. On October 30, 2023, while in the disciplinary classroom, the student targeted his teacher, pushing and shoving her 29 times by 9:40 a.m. He hit and kicked the classroom walls ten (10) times before he was able to sit for 3 minutes to cool down. When asked to complete his math assignment, he pretended to sleep, telling the teacher to stop talking or making noise. When the teacher asked if he was ready to do his math, he started yelling at the teacher and kicked the classroom wall eleven (11) times. When he was finally able to start working on his assignment, the Student started calling his math assignment stupid and yelling at the worksheet.

The Student yelled that his teacher was a “whore”, “ho,” and “weak.” He yelled, “Stay away from me.” When the staff ignored his comments to prevent encouraging the maladaptive behavior, the Student started whistling and screaming. The Student stated, “My life needs to change. I don’t need to take that stupid medicine from Bluebonnet.”

While in a study carrel, the Student told the staff, “Shut the fuck up, you dumb bitch, stupid ass.” When the Student noticed that the teacher was taking notes, he shouted, “Stop writing stuff down before I hit you. I will slap the fuck out of you.” He then slapped the phone out of the teacher’s

hand and said, “I will buy you another phone. I am going to fuck you up if you don’t stop.” The teacher continued the strategy of planned ignoring. The Student aggressively poked, shoved or hit the teacher 32 times.

Later in the day, the student escalated again, calling the teacher a “whore” repeatedly saying “fuck” and saying, “I am going to pull your hair.” The Student hit, pushed, or elbowed the teacher 11 times and pulled out a strand of hair. The teacher was able to get the Student to work on math but while he worked, he continued to yell angrily.

- l. On November 1, 2023, while in the disciplinary classroom, the student hit, kicked, and punched his teacher 80 times. He hit his teacher with a closed fist and kicked staff around their knees to make their knees buckle. He called his teachers’ names such as “ugly ass”, “gay ass”, “whore”, white ass bitch”. And told his teachers, “I don’t give a fuck.” 35 times.
- m. On November 6, 2023, while in the disciplinary classroom, the student started out completing assignments and earned a reward break. After the break the Student needed to use the restroom and while walking to and from the restroom with his teacher, they discussed the District’s Shorthorn football team. When they arrived back at the classroom, the Student asked if they could look up where the football team would be traveling for games, and the teacher said they could look that information up on the next break. In response, the Student refused to do any work, started saying he wanted to go home, said, “I don’t care,” and “Leave me alone,” and made rude comments to his teachers. The Student hit and pushed aggressively 31 times. Once he deescalated, he turned off the classroom lights and pretended to sleep.
- n. On November 8, 2023, while in the disciplinary classroom, the Student hit, kicked, and punched the teacher over five hundred (500) times.
- o. On November 10, 2023, Principal, Dr. Westerfield noted in the Student’s Discipline Report, “At 11:06 someone ran to the office telling me Kacy [assistant principal] needed help. As I entered the room at 11:08, a student was yelling at her to “SHUT UP and get out of his face”. And immediately started yelling at me to leave. He said I was too old to love. “LEAVE, I don’t want you in here.” I was in the room for 2 minutes, and he hit Kacy two (2) times and kicked her two (2) times. He continued to yell “STUPID” and “GET OUT YOU TWO PERVERTS.” I left the room to call mom to come pick him up. She said she was working in Round Top and would try to find someone to come pick him up. I also told her the plan of him being one-on-one with Kacy that we have in place right now is not working. I am worried about the safety of him and the staff. Starting next week he will only attend half day from 9-11. Mom said ok.”

- p. On November 13, 2023, Principal, Dr. Westerfield noted in the Student's Discipline Report, "I heard banging and yelling coming from the room from down the hallway. As I entered student was extremely escalated. He was throwing anything he could get his hands on: trashcan, pencil sharpener, pillow, etc. Trash from the trashcan was all over the floor. Mr. Nicks [teacher] was trying to deescalate student and keep him from running out of the room. Student was yelling "get out, I don't want you here, You're old, bitch, fuck you, you nigger", on and on and on. Student slapped, hit and kicked Mr. Nicks. Mr. Nicks restrained student's arms to stop the hitting. Dr. Westerfield intervened when student began kicking. She restrained his legs. This is when the student sits on Dr. Westerfield's face. Student told Mr. Nicks, "I am going to shoot you." Once student calmed down enough to release him, Dr. Westerfield let the room to call home to have him picked up." Out of fear for Mr. Nicks safety, Dr. Westerfield asked the campus law enforcement officer to wait in the classroom with Mr. Nicks and the Student until the Parent arrived to pick up the Student.
17. On December 4, 2023, the District, pursuant to IDEA, convened an Individualized Education Program ("IEP") team meeting¹, which included the Parent to review the results of the initial Evaluation.
18. The Evaluation conducted by a licensed specialist in school psychology and an educational diagnostician resulted in a 31-page report which found in part, "At school, [Student] struggles with following directions, easily distracted, difficulty maintaining self-control, difficulty regulating impulsive behaviors, has outburst, frequent/sudden mood changes, or excessive period of emotional instability." The report goes on to describe, "Complex and atypical sociological history results in [Student's] atypical and easily triggered negative/unwanted behaviors that cause uncommon reactions to seemingly normal experiences."

¹ In Texas IEP Team Meetings are commonly referred to as Admission Review Dismissal ("ARD") meetings while the document created from the meeting is the child's IEP.

19. The Evaluation found that the Student meets the IDEA eligibility criteria as a student with an Emotional Disturbance and a secondary eligibility of Other Health Impairment due to ADHD.
20. The Student's IEP team recommended placement in the District's special education behavior program ("Shorthorn Behavior Program"). IEP includes an individualized Behavior Improvement Plan and Counseling as special education-related services. The Student's mother agreed to the IEP placement and services.
21. The District immediately began implementing the IEP. The IEP is attached to the Brief in Support of Motion for Temporary Restraining Order and preliminary Injunction as Exhibit A.
22. Following the IEP, the Student was placed in the Shorthorn Behavior Program. While in the Shorthorn Behavior Program, Student engaged in the following violent, threatening, and aggressive behavior as described on the Discipline Logs between December 6, 2023, and December 15, 2023 (the Winter Recess):
 - a. On December 6, 2023, the Student's teacher noted that the Student started crying when his mother started to drive off after dropping him at the entrance of the school. The Parent came back and walked behind him with a belt into the building. The parent walked him into the classroom and the Student began to scream, cry, and kick the door when she left. He attempted to leave the room to follow her. The three adults in the room stood in front of the door to prevent the Student from following his mother out of the building. In Response, the Student exhibited "hostile behaviors" towards the staff members. The report notes that the Student stated "Shut up", "stupid bitch", "your breath stinks", made 'your mama' comments to the staff. He told a staff member that she has roaches, rats, and bed bugs. He snatched the glasses from a staff member's face, twisted the glasses until they snapped into pieces. He continued yelling, cussing, and insulting the teachers and staff.

- b. On December 12, 2023, the Student made the following statements to his teacher:
- i. Gay ass nigger
 - ii. Stupid nigger
 - iii. Roast nigger
 - iv. Bitch ass nigga
 - v. Hoe ass nigga
 - vi. You a gay boy like your gay ass daddy
 - vii. Your daddy died. He got shot with those switches
 - viii. I'll slap the fuck out of you
 - ix. Gay ass bitch ass nigger
 - x. I hope you die one day
 - xi. You're a crackhead nigger
 - xii. Your breath smells like strait up doodoo
 - xiii. Imma call Ghostbusters on your house. They gonna shoot the hell outta you.
 - xiv. Imma slap you dead in your face
 - xv. Hoe
 - xvi. That's why you're a bitch
 - xvii. Nigga, you need to go to church so they can teach you some gospel
 - xviii. That's why your daddy dead hoe
 - xix. Slap the fuck outta you
 - xx. I'm gonna punch you
 - xxi. You need to wash your face, shitty ass
 - xxii. Imma get my daddy for you
 - xxiii. Get the fuck outta here
 - xxiv. Imma slap the phone out your hand
 - xxv. I'll punch the fuck outta you
 - xxvi. I'll punch your dead in your shirt
 - xxvii. They shot your daddy with the switches. Now his bitch ass is dead
 - xxviii. I can't wait until 4:38. Imma beat the fuck outta you
 - xxix. You're a bitch
 - xxx. Yeah, you a bitch, you hoe ass nigga
 - xxxi. You talk too much
 - xxxii. You're stupid
 - xxxiii. Can you leave?

The Student started hitting himself and when the teacher asked him why he was hitting himself, he responded that the teacher should ask the school resource officer to come so that he can tell the officer that his teacher assaulted him.

- c. On December 13, 2023, The Student pushed his teachers more than 20 times, punched his leg several times, hit another teacher with his shoe, called his teachers a nigger several times. He kicked a teacher and then asked, what does that mean. The Student and made the following statements:

- i. If you don't stop writing everything down, scary boy
- ii. That's why Andy B. is your fucking daddy hoe
- iii. Shut up
- iv. That's why you were crying when your wife left you
- v. That's why your nose fat, your teeth big
- vi. Gorilla looking ass
- vii. Why are you looking at me? Do we have a problem?
- viii. Your barber can't even keep your hairline
- ix. I don't want you touch me, we gonna have a huge problem
- x. If you touch me, we gonna be fighting
- xi. If you do touch me, I'm gonna hit you upside your head with my shoe
- xii. Nigga, imma slap you upside your head with this shoe
- xiii. Come at me
- xiv. Let me hit you in your face
- xv. You think you hard? But you scary
- xvi. Why are you smirking? You wired
- xvii. I'm gonna spray paint your car. Imma put a gay person on it
- xviii. I'm gonna shoot you with an Orbes gun
- xix. You know I'm going to take that place. You don't have to do school work there. And they have basketball
- xx. What you looking at? Before I throw my shoes at your face and break your glasses like I did Ms. T's.
- xxi. Picklehead
- xxii. I don't wanna have no problems with you because if I do
- xxiii. You look like Lil Baby with those buckeyes
- xxiv. Get away from me, David Wayne
- xxv. You better watch your back when you get home
- xxvi. Hoe ass nigga
- xxvii. Mr. Shut the Fuck Up
- xxviii. Ugly Ass boy
- xxix. What the Fuck you looking at?
- xxx. Don't fucking touch me
- xxxi. I know you can't control your anger nigga
- xxxii. Here little buddy, hit me
- xxxiii. I've been waiting for this
- xxxiv. Shut your ass up bitch
- xxxv. Imma sue you. If you sue me one day, your gonna get a fuck you
- xxxvi. With your yellow ass teeth
- xxxvii. You live in a raggedy ass trailer
- xxxviii. Nigga, fat ass stomach
- xxxix. Shut your gay ass over
- xl. If you touch me, We gonna have a big problem
- xli. I want you to hit me nigga
- xlii. How would you feel if I punch you two times and drop kick you
- xliii. What the hell you gonna do

- xliv. That's why your son Davis is ugly as hell
- xliv. That's why your mama dead. Hoe ass
- xlvi. I will drop the fuck outta you

The Student yelled so children in the halls could hear him "You got the right fucking one you hoe ass nigga" and threatened to throw milk on a teacher.

23. On December 13, 2023, the District conducted an IDEA Manifestation Determination Review ("MDR") in accordance with 34 C.F.R. § 300.530(e). The purpose of the meeting is to determine if the conduct which resulted in a disciplinary removal was either caused by, or had a direct and substantial relationship to, the student's disability or, whether the conduct in question was the direct result of the school district's failure to implement the IEP. (*See Exhibit J, December 13, 2023, Manifestation Determination Review.*)
24. During the MDR meeting the team discussed the Student's behavior incidents on December 12 and December 13, 2023.
25. The Parent acknowledged the Student's history of aggression and assaultive behavior and reminded the District that she asked about the use of corporal punishment. The District responded that it does not believe that corporal punishment is appropriate for a student with a disability. The IDEA calls for the use of positive behavior supports and corporal punishment is not a positive behavioral support.
26. The principal, Dr. Westerfield shared her observations and concerns for the Student's safety and the safety of everyone else in the room and campus. She noted that staff members refuse to be in the room alone with the Student due to his violent outburst and uncontrollable aggression.

27. The team discussed that the Student was currently in the most restrictive campus-based placement but agreed to wait until after the winter recess to determine if behaviors improved.

28. After returning from winter recess, the Student returned to his classroom in the Shorthorn Behavior Program and engaged in the following violent, threatening, and aggressive behavior as described on the Discipline Log and Records:

- a. On January 4, 2024, the Parent was on campus listening to a behavior incident at school when she overheard the Student say, "fuck my mom" to his teacher. The Parent responded by entering the classroom, using a belt she began spanking the Student in his classroom. As the Parent attempted to spank the Student, the Student grabbed the belt from his mother's hand, and a physical altercation occurred between the Student and his mother. The Parent reported that she had to bite the Student in order to stop him from wrestling with her for the belt.

Following the incident, while the school team was debriefing and de-escalating with the Student, he expressed a suicidal threat. The crisis team was notified, and Bluebonnet was contacted. Bluebonnet stated that the Student needed an emergency crisis appointment at their clinic but did not have any immediate appointments. The Bluebonnet representative explained to the District that they had been in contact with the Parent over the holiday recess about the Student's escalating behavior in the home. They also explained that they can only do so much since their physicians have recommended medication for the Student, but his mother has refused to administer the prescribed medication.

- b. On January 8, 2024, the Student urinated on the floor of the classroom after telling his teacher, "I'm going to pee in here."
- c. On January 26, 2024, the Student eloped his classroom and entered a third-grade classroom before returning to his classroom. Once back in his classroom, the student became escalated wanting to email his mother. As the teacher attempted to block the door to prevent the Student from eloping the Student went to the teacher's computer and began searching for games. The Student responded with verbal aggression to the teacher's multiple prompts, redirection, and options to take a break. When the computer was removed from the classroom the Student became physically aggressive hitting and shoving the teacher and staff in the room. The Student was directed to a calm-down area of the classroom, where he hit his teacher in the face while continuing his verbal and physical aggression. The teacher

restrained the Student until the student bit the teacher, causing her to release the Student. As soon as the Student was released, the Student continued hitting the teacher. The teacher was able to restrain the student until he was able to use a calm voice. However, as soon as the teacher released the Student, he charged the teacher, shoved her, and began hitting her again. A school resource officer on campus heard the commotion and entered the classroom. At the sight of the officer the Student calmed down allowing the teacher to get away from the Student. The Student received a three-day suspension for the assault.

29. Following the winter recess, a thirty-day revision IEP team meeting (“30 Day IEP”) was held on January 11, 2024, to review the Student’s process and determine if any changes to his educational program were necessary.
30. During the meeting, the Parent disclosed that the Student was placed in a Residential Respite Program provided by Bluebonnet to give his mother a respite/break.
31. During the 30 Day IEP, the Student’s teacher explained that only two of thirteen school days in which the Student attended were considered “good” days. His teacher explained that the Student hits, kicks, curses, uses racial slurs, and throws things. His teacher explained that on some days the Student arrives at school agitated and does not deescalate for the entire day. He further explained that the Student is very defiant whenever any work is brought up.
32. The 30 Day IEP team discussed the behavior support plan and accommodations which were being implemented and that the program was not rendering success.
33. The District offered to have a behavioral specialist conduct an observation.
34. The 30 Day IEP team discussed exploring more restrictive educational placements including a non-public residential program.

35. On January 17, 2024, Ms. Robertson, the Director of Special Education, spoke to the Parent to explain that she had researched local residential treatment centers and wanted to set up a visit for Ms. Robertson and the Parent to tour some program. Ms. Robertson followed up with an email to Ms. Granger the same day asking for the Parent's availability to visit the local programs.
36. The Parent replied to Ms. Robertson's email on January 17, 2024, stating, "Hey, I'm not going to go y'all can go and lmk how it goes!!"
37. Ms. Robertson and Dr. Westerfield visited the Shiloh Non-Public School in Manvel, Texas. Ms. Robertson emailed the Parent on January 26, 2024, telling her about the visit.
38. On February 8, 2024, the District held an IEP revision meeting ("Revision Meeting") with the Parent to review the report from the Behavior Specialist, Amy Ten Napel, LSSP and to discuss the visit to Shiloh Non-Public School.
39. Ms. Ten Napel's reports included the following conclusion:

"[Student] is an exceptionally high-needs student whose extreme behaviors pose a serious threat to both himself and those around him. The pervasive nature of his disruptive and aggressive actions severely hinders any effective instruction or learning within the educational environment. Due to the intensity of his conduct, constant supervision by a minimum of two adults is deemed necessary to ensure both his safety and protect against potential false accusations. Throughout the school day, [Student]'s behaviors persist unabated, creating an atmosphere where staff members endure daily physical and mental abuse. The relentless nature of these actions calls for a more restrictive and specialized environment, surpassing the capabilities of his current self-contained setting. Therefore, the consultant strongly recommends that the district explore the option of an out-of-district placement to better address [Student's] unique needs at this time."

40. The Revision IEP team discussed the visit to Shiloh Non-Public School and the principal of Shiloh Non-Public School, Erika Slater detailed their program and answered questions from the team.
41. The District recommended placement at Shiloh Non-Public School.
42. The Parent's advised the Revision IEP team that the Student could "do a flip tomorrow" and no one knows if he is going to change his behavior on his own. The Parent, who attended the meeting via Zoom hung up and declined to return to the meeting.
43. The District believes that such a "flip" is unlikely and believes that the Student's behavior is out of control and every day he is on campus, he presents a clear and present danger to the other children, educators, and staff.
44. The Student has been accepted to and the District has offered placement in a state-approved non-public school at taxpayer expense through the Revision IEP.
45. The Student should have begun his new special education program at Shiloh Non-Public School following his February 8, 2024, Revision IEP team meeting. However, the Parent's attorney filed for special education due process on February 14, 2024, invoking "stay put" preventing the District from implementing the February 8, 2024 IEP.
46. Defendant's counsel has further notified the undersigned Plaintiff's counsel that they intend to see a continuance of the due process matter. If granted, it is likely that the due process matter will not proceed until June with a decision sometime in August leaving the Student in the Shorthorn Behavior Program where he continues to be an daily imminent danger to himself and others.

47. Following the February 8, 2024, Revision IEP, the Student's behavior has not improved, and he exhibited the following violent, threatening, and aggressive behaviors as described on the Discipline Log and Records:

- a. On February 13, 2024, the Student was shouting obscenities, insults and threats at a teacher. He was able to calm down and was provided a science quiz to work on. He quickly became escalated again and said he wanted to blow up the school and hoped someone was inside when he blew it up. He repeated this statement several times. When redirected, the Student said he did not care who heard him threaten to blow up the school because he would not get in trouble.
- b. On February 19, 2024, the Student took sausage from his breakfast into the boy's restroom and shoved them in the urinal clogging the drain.
- c. On February 20, 2024, the Student told his teachers that he was not going to work that day. When his teacher prompted him to get work done, he became verbally aggressive and threatened to hit staff in the face.

At around 8:45 a.m. the school was affected by a citywide power outage. The Student became very restless and irritated while the power was out, not following directions, attempting to put his hands on staff, walking around the classroom and threatening to break his wrist so he can go home. During the power outage he stated:

- i. I hate this school
- ii. I'm stuck in this fucking bitch ass place
- iii. I hate this dumbass school
- iv. Move out of my way before I knock your phone out of your hand and break it
- v. Don't make me hit you
- vi. Move wierdo before I punch you
- vii. I'm going to punch you dead in your nose
- viii. If we were not in this school, and I catch you outside of this school I'm going to hurt you
- ix. I'm going to slap you
- x. I'm going to punch you
- xi. You look poor
- xii. You're wearing Walmart shoes
- xiii. You have fake Jordan's
- xiv. Your clothes look poor
- xv. Your disgusting
- xvi. You got a patch on the back of your head, that's why you have fake ass Jordan's on

- xvii. I'm going to step on feet and crease your shoes
- xviii. You have to chew gum because you didn't brush your teeth and you don't have toothpaste
- xix. I'm going to throw this pencil out you go

Following the power outage at 10:35 a.m. the Student refused to work and tried sleeping in the cubby area of the classroom. The staff tried to wake him, but the Student responded that he did not care if he got bad grades, did not want to work, and stated he would not wake up until he gets his lunch. As his teachers prompted the Student to get some work done, he became verbally disrespectful making statement such as "what you looking at, you bum."

The Student's lunch was delivered to his classroom and when the staff told the Student what the lunch was for the day, he responded, "Fuck that." During a restroom break the Student stood in a stall with the door closed to avoid returning to class to do work. When he finally returned to the classroom he told his teacher "I hate you", "You're the worst teacher ever", and "I wish you would leave."

The Student received his special education counseling session at 12:30 p.m. During the session, he was rude to the counselor, standing on a chair, refusing to pay attention, messing with books on the bookshelf, and trying to end the session early.

- d. On February 22, 2024, another student walked into the Student's classroom. In response, the Student stated, "I'm not scared of you. You know you want to fight me. Come on, fight me." In the morning hours, the Student refused to work, would not follow directions, wandered around the classroom and called his teacher a bitch.

As he walked to his physical education class, he took off his shoes and threw them into the school's parking lot. When he was escorted to retrieve his shoes, he threw them again and continued to say he was going to throw his shoes in the dumpster. Rather than go to PE, he attempted to get in the building. When his teacher did not unlock the back door, he attempted to elope to the front of the school. He began banging on the doors of the building. As a staff member, unaware of what was happening outside, opened the door to exit the building, the Student gained access.

Once the Student was back in his classroom he remained irritated about his shoes and began banging a chair into the wall damaging the wall. When a teacher tried to remove the chair, the Student started swinging at the teacher trying to hit him. The Student began kicking classroom walls and breaking pieces of drywall from previous holes he kicked into the classroom walls.

48. It is the District's opinion that, in the current 'stay put' placement the Student represents an imminent threat to himself and others.
49. The District does not have the legal authority to unilaterally change the Student's current educational placement except by order of this Court.
50. Where a student poses an immediate threat to the safety of others, the Court may temporarily enjoin a dangerous disabled child from attending school." *Honig v. Doe*, 484 U.S. 305, 325-28 (1988); see also 20 U.S.C. § 1415(i)(2)(C)(iii)
51. This Court can provide the District with injunctive relief and order an immediate change to the Student's educational placement. *Honig v. Doe*, 484 U.S. 305, 326 (1988).
52. The District has suffered and will continue to suffer irreparable injury unless this Court issues a Temporary Restraining Order and Preliminary Injunction in this matter.
53. The District's attorney certifies that, on February 28, 2024, during a Resolution Session held in accordance with 34 C.F.R. § 300.510, she informed the Parent and her attorneys, Shiloh Carter, Olivia Lee, and Alexander Zaibaq of the District's intention to file this Verified Complaint and related documents seeking a temporary restraining order and Honig Injunction that would change the Student's placement as described in this Verified Complaint. The District does not have the unilateral authority to change the Student's educational placement as described in Paragraph 41 and detailed in the February 8, 2024, Revision IEP concurrently filed as Exhibit C. Therefore, the District must obtain injunctive relief from this Court. *Honig v. Doe*, 484 U.S. 305, 326 (1988).

Legal Standard

- 54. Absent injunctive relief from this Court, the District must permit the Student to remain in his current stay-put placement, where he poses an imminent risk of harm to himself and others.
- 55. The District will suffer immediate irreparable injury unless this Court grants the relief requested by this Verified Complaint because the Student poses an imminent risk of injury to himself and others in his current educational placement.
- 56. The District is substantially likely to succeed on the merits of this action.
- 57. The balance of hardship tilts heavily in the District's favor.
- 58. The public interest favors the relief requested by the District.

Relief Requested

Therefore, the District respectfully requests this Honorable Court to enter a Temporary Restraining Order and Preliminary or Permanent Injunction:

- A. Prohibiting the Student from entering all premises owned or used by the District and all District-related events pending further order of this Court.

B. Permitting the District to provide the Student with the placement and services identified in the Student's February 8, 2024, Individualized Educational Planning ("IEP"), which places the Student at Shiloh Non-Public School ("Shiloh Non-Public School") approved by the Texas Education Agency ("TEA"), during the pendency of the TEA due process hearing and any resulting appeals.

Respectfully submitted this 28th day of February 2024.

GENEVA JONES & ASSOCIATES, PLLC

/s/Geneva L. Jones
Geneva L. Jones,
Tx Bar No. 24095771
2245 Texas Drive, Suite 300,
Sugar Land, TX 77479
Office: (832) 324-5882
Direct: (832) 324-5223
Email: geneva@geneva-jones.com

Verification

Dr. Julie Motomura, being first duly sworn, testifies that: she is the Superintendent of Schulenburg Independent School District; she has reviewed the Verified Complaint for Temporary Restraining Order and Injunctive Relief; the allegations set forth in the Verified Complaint are true; and if called as a witness, she would competently testify the facts set forth in the Verified Complaint from personal knowledge.

Dr. Julie Motomura
Dr. Julie Motomura

STATE OF TEXAS)
)
COUNTY OF FAYETTE) ss.

Subscribed to and sworn before me on February 28, 2024, personally appeared before me, a Notary Public, in and for said Fayette County, Julie Motomura, who executed the foregoing instrument and acknowledged the same as her free act and deed.

Brandi Rerich
Brandi Rerich, Notary Public
Fayette County, Texas
My Commission Expires: 2-01-2027
Acting in the County of: Fayette

